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**ENVIRONMENTAL PROTECTION
COMPLIANCE AND ENFORCEMENT**

Coastal Permit Program

Proposed amendment: N.J.A.C. 7:7-1.3, 8.1, 8.3, 8.7, and 8.12

Proposed new rule: N.J.A.C. 7:7-8.14

Authorized by:	Lisa P. Jackson, Commissioner, Department of Environmental Protection
Authority:	N.J.S.A. 12:5-3; 13:1D-9; 13:9A-1 et seq.; 13:19-1 et seq.; and 13:1D-125 et seq.
Calendar Reference:	See summary below for explanation of exception to calendar requirement.
DEP Docket No:	_____
Proposal Number:	PRN 2006-_____

Submit written comments by (no later than 60 days after publication) to:

Gary J. Brower, Esq.
Attention: DEP Docket Number _____
Office of Legal Affairs
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the

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applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal document can be viewed or downloaded from the Department's web page at www.state.nj.us/dep/index.html.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department regulates most activities located within the coastal zone of New Jersey pursuant to the Coastal Permit Program rules, N.J.A.C. 7:7. The general goal of the Coastal Permit Program rules is to protect from unbridled development this diverse and environmentally fragile area while allowing all people reasonable access to enjoy the natural amenities this area has to offer by providing a standard set of requirements for the development of the land, review and issuance of permits, and the enforcement of jurisdiction pursuant to the relevant statutes. The specific intent of the Coastal Permit Program rules at N.J.A.C. 7:7 is to establish standard procedures by which the Department regulates development and enforces jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19-1 et seq.), the Waterfront Development Law (N.J.S.A. 12:5-3), and the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.). As authorized

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by these statutes, the Coastal Permit Program rules govern the following types of activities:

(1) under CAFRA, the construction of development within the coastal area described at N.J.S.A. 13:19-4; (2) under the Wetlands Act of 1970, the draining, dredging, excavation, deposition of material, or the erection of structures, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act of 1970; and (3) under the Waterfront Development Law the filling, dredging of, or placement of structures in any tidal waterway, or in certain upland areas adjacent to tidal waterways outside the CAFRA area.

The Department is proposing to amend the Coastal Permit Program rules to categorize violations of CAFRA, the Wetlands Act of 1970 and/or the Coastal Permit Program rules promulgated pursuant to CAFRA or the Wetlands Act of 1970, as either minor or non-minor for the purpose of providing grace periods in accordance with N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law. By its terms, the Grace Period Law does not apply to violations of the Waterfront Development Law, N.J.S.A. 12:5-3. (See N.J.S.A. 13:1D-126.) The proposed rule and amendment set forth how the Department will respond to any violation of CAFRA and the Wetlands Act of 1970 identified as minor.

On December 22, 1995, the Legislature enacted the Grace Period Law, N.J.S.A. 13:1D-125 et seq., which requires the establishment of procedures to ensure the consistent application of grace (compliance) periods for minor violations of certain environmental statutes. Pursuant to the Grace Period Law, the Department is required to designate, as

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minor or non-minor violations, violations of rules contained in sixteen environmental statutes. Under the Grace Period Law, any person responsible for a minor violation is afforded a period of time to correct the violation. This period of time is known as a grace period. If the minor violation is corrected as required, then the Department will not seek to impose a penalty. In those cases where a violation is not corrected within the grace period, the Department may pursue enforcement action in accordance with its statutory authority including, but not limited to, the imposition of penalties as may be appropriate within the exercise of the Department's traditional, judicially recognized enforcement discretion.

The Grace Period Law does not affect the Department's enforcement authority, including the exercise of enforcement discretion, to treat a violation as minor. In those situations where a violation is labeled as minor in this proposed rule and amendment, but in fact the specific violation as it occurred does not fulfill all the statutory requirements for a minor violation (N.J.S.A. 13:1D-129(b) and proposed N.J.A.C. 7:7-8.14(c)), the Department reserves its discretion to treat the violation as non-minor.

The Department interprets the Grace period Law to give it the flexibility to re-classify a minor violation as non-minor if one or more of the Grace Period law requirements have not been met. For instance, the Department believes that the Legislature did not intend for a violation which actually results in serious harm to the public, the environment or to natural resources to be considered minor for grace period purposes. This is because one of the criteria for a minor violation is that it impose minimal risk to public health, safety and natural resources. Since the statute intends that the

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Department consider the circumstances of a particular violation to determine, for example, whether there has been a similar or the same violation in the preceding twelve months or a pattern of illegal conduct, it is not inconsistent with the legislative intent to allow the Department the flexibility to re-classify a violation as non-minor under the particular circumstances of a violation.

In designating, through rulemaking, types or categories of violations as minor, the Department must apply the criteria set forth in the law at N.J.S.A. 13:1D-129(b). These criteria are as follows:

(1) The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

(2) The violation poses minimal risk to the public health, safety and natural resources;

(3) The violation does not materially and substantially undermine or impair the goals of the regulatory program;

(4) The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or a local government agency;

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(5) In the case of a permit violation, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12 month period;

(6) In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12 month period;

(7) In the case of a violation of the Coastal Area Facility Review Act, N.J.S.A.13:19-1 et seq.; the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; The Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.; the Flood Hazard Area Control Act, N.J.S.A.58:16A-50 et seq. or any rule or regulation promulgated thereunder, or permit issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12-month period;

(8) In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violation at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible; and

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(9) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the period of time prescribed by the Department.

The Grace Period Law also requires the Department to establish the length of the grace period, which may be no fewer than 30 days or more than 90 days (unless extended), based upon the nature and extent of the minor violation and a reasonable estimate of the time necessary to achieve compliance. The Department may establish a special class of minor violations that, for public health and safety reasons or regulatory mandates, must be corrected within a period of 30 days or less. The Department has determined that none of the violations proposed to be designated as minor would have health and safety ramifications requiring a special class of minor violations necessitating less than 30 days to comply. Therefore, the Department is not proposing to establish such a special class of minor violations for the Coastal Permit Program rules.

Of the criteria provided by the Grace Period Law, only criteria (2), (3) and (9), as listed above, may pertain to all violations of a particular regulatory requirement. Therefore, the Department has determined that those violations of the Coastal Area Facility Review Act, the Wetlands Act of 1970 and the Coastal Permitting Program rules that pose minimal risk to public health, safety, and the environment, do not undermine or impair the goals of the program, and can be corrected within a time period of up to 30 days, should be designated as minor in Table A at N.J.A.C. 7:7-8.14(f).

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The additional statutory criteria, (1), (4), (5), (6), (7), and (8) above, regarding respectively, the intent of the violator, the duration of the violation, and whether it is a repeat offense, are fact-specific for each violation and must be considered on a case-by-case basis. Thus, each violation listed at N.J.A.C. 7:7-8.14(f) Table A that is identified as minor will be eligible for a grace period only if it meets the additional statutory criteria set forth in proposed new N.J.A.C. 7:7-8.14(d)1 through 6.

To implement the Grace Period Law and develop this proposal, the Department utilized the criteria established by the Grace Period Law and the priorities of New Jersey's coastal management program to review each Coastal Permit Program rule to determine if the violation of it should be classified as minor. In order to obtain assistance in the development of this proposal, the Department initiated an informal process to discuss the potential rules and receive input from interested parties. As part of this process, the Department developed a discussion document, which set forth a proposed list of non-minor violations of the Coastal Permit Program rules. Any violations not identified in the discussion document as non-minor would be designated as minor by default. The discussion document was posted on the Department's Compliance and Enforcement website on January 3, 2005 as a Compliance Advisory. On January 24, 2005, the Department conducted an informal workshop regarding the discussion document and to accept public comment. The Department accepted written comments on the discussion document until February 4, 2005. The Department received several written comments. The most frequent comment received questioned the appropriateness of the promulgation of any grace period rules for land use programs, and questioned the Department's decision to identify only non-minor violations and designate all other violations as minor by default.

In response to the comments regarding the inappropriateness of establishing any land use grace period rules, the Department notes that the Grace Period Law mandates that the Department promulgate rules designating minor and non-minor violations for enumerated environmental laws, including the Freshwater Wetlands Protection Act, CAFRA, the Wetlands Act of 1970, and the Flood Hazard Area Control Act. In response

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to the comments questioning the Department's identification of only non-minor violations in the discussion document, the Department in this proposal has identified Coastal Permit Program rule violations, and designates them as either minor or non-minor pursuant to the criteria identified in the Grace Period Law. (See proposed N.J.A.C. 7:7-8.14(f) Table A.) If a person commits a violation not specifically identified in Table A, the Department will determine whether the violation is minor or non-minor by comparison with the violations identified in Table A in accordance with proposed N.J.A.C. 7:7-8.14(f).

Violations identified by the Department as having the potential to impact the physical resource in any way are proposed to be classified as non-minor. Violations designated as non-minor comprise the majority of potential violations of the Coastal Permit Program rules. Violations proposed to be classified as minor include the failure to submit certain documents to the Department in a timely manner. For example, a permit issued pursuant to the Coastal Permit Program rules may require a permittee to submit documentation to the Department as prescribed in the permit. Generally, submittal of documents is an administrative requirement. While the information contained in the document is important, a short delay in filing of the document will not have immediate environmental consequence. Therefore, it is appropriate under the Grace Period Law for the Department to allow a grace period to enable the violator to come into compliance by submitting such documents. If the permittee responsible for submitting the documents fails to produce and submit the required documents within the grace period, the Department may, in accordance with the provisions of the Acts and this chapter, seek to impose a penalty that is retroactive to the date the notice of violation was issued.

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It should be noted that even violations designated as minor must be corrected. However, in accordance with the Grace Period Law, those responsible for minor violations are afforded a period to come into compliance prior to the imposition of penalties.

The Department proposes to add a definition of the term “grace period” at N.J.A.C. 7:7-1.3. A grace period is the period of time afforded under the Grace Period Law for a person to correct a minor violation in order to avoid imposition of a penalty that would otherwise be applicable for such violation.

The Department proposes to amend N.J.A.C. 7:7-8.1 to provide that the proposed new grace period provisions at N.J.A.C. 7:7-8.14 apply when the Department takes enforcement action. Similar amendments are proposed to N.J.A.C. 7:7-8.12. Proposed new N.J.A.C. 7:7-8.14, described in detail below, sets forth the grace period requirements.

Proposed N.J.A.C. 7:7-8.14(a) specifies that a violation of the rules that qualifies as a “minor violation” shall not result in imposition of a penalty provided the violation is corrected during the applicable grace period in accordance with the requirements of the section.

Proposed N.J.A.C. 7:7-8.14(b) specifies that each violation identified in Table A by an “NM” is a non-minor violation and does not qualify for a grace period.

Proposed N.J.A.C. 7:7-8.14(c)1 through 5 set forth the procedure for determining the minor or non-minor designation of a violation that does not appear on Table A. The Department proposes that where a violation is comparable to a violation listed in Table A, the Department will ascertain whether the violation is eligible for grace period treatment based upon whether the comparable violation is a minor or non-minor violation and whether it meets the applicable criteria at N.J.A.C. 7:7-8.14(d). If the comparable violation is minor and meets the criteria of N.J.A.C. 7:7-8.14(d)1 through 6, then the violation at hand will also be minor and will be subject to a grace period as provided at N.J.A.C. 7:7-8.14(e). Proposed N.J.A.C. 7:7-8.14(c)2

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provides that, if a violation is not comparable to a violation on Table A, then the violation must meet the criteria at (d)1 through 9 to be considered minor. Proposed N.J.A.C. 7:7A-8.14(c)5 describes how comparability is determined and clarifies that in no case will a violation be considered comparable to a violation designated as minor if it does not meet the criteria of N.J.A.C. 7:7-8.4(d)7 through 9.

Proposed N.J.A.C. 7:7-8.14(e)1 requires the Department to issue a notice of violation to the person responsible for the minor violation. The notice must identify the violation, the statutory or other provision violated, and the length of the grace period. The notice is necessary to advise the person responsible for the violation of the applicability of the grace period and the need to correct the violation.

If the person responsible for a minor violation demonstrates that he or she has corrected the violation within the applicable grace period, then proposed N.J.A.C. 7:7-8.14(e)2 provides that no penalty will be sought for the violation.

Proposed N.J.A.C. 7:7-8.14(e)3 provides that a person responsible for a minor violation must submit information describing corrective action taken prior to expiration of the grace period to achieve compliance within the grace period. The responsible person must submit, in writing, information certified to be accurate detailing the corrective action taken or how compliance was achieved. The Department may perform an investigation to determine that the information submitted is accurate and that compliance has been achieved.

The Grace Period Law recognizes that, in certain limited circumstances, it may be appropriate to allow additional time for compliance to be achieved without penalty. Under proposed new N.J.A.C. 7:7-8.14(e)4, if a person responsible for a minor violation seeks additional time beyond the standard grace period of 30 days to achieve compliance, the person responsible for the violation must submit a written request for an extension to the Department at least one week prior to the expiration of the initial grace period and explain why additional time is needed. The Department may, in its discretion, issue a written extension to the grace period specified in the notice of violation. No more than 90 additional days may be granted. In exercising its

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discretion to approve a request for an extension, the Department may consider whether the violator has taken reasonable measures to achieve compliance in a timely manner, whether the delay has been caused by circumstances beyond the control of the violator, whether the delay will pose a risk to the public health, safety and natural resources, and whether the delay will materially and substantially undermine or impair the goals of New Jersey's Coastal Management Program.

If the person responsible for the violation fails to demonstrate to the Department that compliance has been achieved within the period of time specified in the notice of violation, or any approved extension of the grace period, then under proposed new N.J.A.C. 7:7-8.14(e)5, the Department may seek to impose a penalty retroactive to the date on which the notice of violation was issued.

A person responsible for a violation may submit no more than one extension request for a violation specified in a notice of violation pursuant to proposed N.J.A.C. 7:7-8.14(e)6.

Proposed N.J.A.C. 7:7-8.14(f) and Table A identify the violation of the Coastal Permit Program rules implementing CAFRA and the Wetlands Act of 1970 as minor and non-minor for purposes of grace period treatment. N.J.A.C. 7:7-8.14(f) states that the descriptions of violations in Table A are provided for informational purposes only and if there is a conflict between a violation description in the Table and the rule to which the violation description corresponds, then the rule governs.

Table A at proposed N.J.A.C. 7:7-8.14(f) sets forth the rule citation, the violation description, and the Grace Period "Type of Violation" designation. The "Type of Violation" column identifies the violation as either minor ("M") or non-minor ("NM"). A violation of the specific provision identified in Table A at N.J.A.C. 7:7A-8.14(f) as minor would qualify for a grace period, provided that the violation meets the statutory criteria of N.J.S.A. 13:1D-129(b)(1), (4), (5), (6), (7), and (8), which are set forth in proposed N.J.A.C. 7:7-8.14(d)1 through 6.

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Social Impact

The proposed rule and amendments will provide a positive social impact by helping encourage a greater sense of cooperation between the Department and the regulated community, including homeowners. By removing the threat of penalties for certain types of violations which pose a minimal risk to the environment and do not undermine the regulatory goals of the program (and which are herein defined as minor), and where compliance is achieved within the time specified, the proposed rule and amendments will encourage the regulated community to take positive action toward achieving compliance.

Economic Impact

The establishment of grace periods for certain violations of the Coastal Permit Program rules will provide an incentive to violators to correct these violations by not seeking penalties if correction occurs within the time required. As the proposed rule and amendments do not affect the violator's existing responsibility to correct noncompliance, they will not impose any additional requirements upon the regulated community and, therefore not impose any additional economic burden. The proposed rule and amendments are anticipated to have a positive economic impact by avoiding the imposition of monetary penalties for certain types of minor violations where compliance has been achieved as required. Only those entities that have committed violations of environmental statutes will be liable for a penalty.

Environmental Impact

The Coastal Permit Program rules have had and will continue to have a positive environmental impact by providing for the comprehensive regulation and management of the coastal zone and assuring that work in the coastal zone is regulated to protect its natural resources. The penalty provisions of the existing

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rule will continue to provide a deterrent to those who would violate the regulatory requirements. However, by allowing an eligible violator an opportunity to correct minor, non-repetitive violations, and thus avoid penalty, it is anticipated that this proposed rule and amendments will encourage the regulated community to correct certain types of violations in a more timely manner. Prompt correction will reduce the potential risk that minor violations may have created and thus will have a positive environmental impact.

Federal Standards Analysis

N.J.S.A. 52:14B-1 requires State agencies that adopt, readopt or amend any rule or regulation to provide a comparison with Federal law and to provide further discussion and analysis (including cost-benefit analysis) if the standard or requirements imposed by the agency exceed standards or requirements imposed by Federal law.

The Federal Coastal Zone Management Act (16 U.S.C. §§1450 et seq.) was signed into law on October 27, 1972. The Act does not set specific regulatory or enforcement standards for development in the coastal zone; rather, it provides broad guidelines for states developing coastal management programs. These guidelines are found at 15 C.F.R. Part 923. The guidelines do not specifically address the review of enforcement standards that should be applied to new coastal development in order to preserve and protect coastal resources and to concentrate the pattern of coastal development. They simply provide a planning and management process, without establishing development standards for development in the coastal area.

The proposed Grace Period rule does not impact the scope of New Jersey's regulations, but only identifies certain violations which warrant a grace period. The Department has determined that this proposed rule and amendments to implement the Grace Period statute contain no provision or standard that exceeds any standards or requirements imposed by Federal law.

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There are no Federal Grace Period rules or Federal equivalent corresponding to the proposed rule and amendments, therefore no further analysis is necessary.

Jobs Impact

The proposed rule and amendments will not result in either the generation or loss of jobs within the State. No facility or individual will incur any costs unless the facility or individual commits a violation that results in a penalty.

Agriculture Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed this proposed rule and amendments and has determined that the proposed rule and amendments will have little or no impact on the agriculture industry. If there is any effect at all upon members of the agricultural industry, it is anticipated that such effect will be to afford those members the same opportunity as others to correct certain types of violations in a manner as provided by the rule and amendments and thereby avoid a possible penalty. If a violation of the Coastal Permit Program rules occurs as a result of farming operations, the proposed rules will not change in any way the violator's responsibility to achieve compliance. The proposed rule and amendments may have a potential positive impact by eliminating potential penalties for certain minor violations if compliance is achieved in a timely manner.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and

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employ fewer than 100 full-time employees. Some business that conduct activities in regulated areas may come within the definition of small business.

Small businesses will incur the penalties established under the Coastal Permit Program rules only if they are determined to be in violation of N.J.A.C. 7:7. The establishment of grace periods will allow a small business responsible for a violation to avoid penalties if the violation is corrected within the time provided. It is, therefore, anticipated that the proposed rule and amendments will encourage violators to achieve compliance in a timely fashion without the need for professional services and avoid repetition of the violation. The proposed rule and amendments imposes no reporting or recordkeeping requirements. Grace periods are not provided based on business size, thereby ensuring a fair, efficient and effective penalty scheme.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed rule and amendment's impact on smart growth and the implementation of the State Plan. The proposed rule and amendments do not change land use policies or infrastructure development, but only provide a grace period for certain minor violations.

Since the proposed rule and amendments will encourage protection of the coastal resources in New Jersey, the proposed rule and amendments support the conservation and environmental protection goals and policies underlying the State Plan.

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Full text of the proposed amendments and new rule follows (additions indicated in underlined boldface **thus**; deletions indicated in brackets [thus]):

N.J.A.C. 7:7-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Grace period” means the period of time afforded under the Grace Period Law, N.J.S.A. 13:1D-125 et seq., for a person to correct a minor violation in order to avoid imposition of a penalty that would otherwise be applicable for such violation.

...

7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, **and in accordance with the grace period requirements set forth at N.J.A.C. 7:7-8.14,** pursue the remedies specified in 1 through 4 below. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

1. – 4. (No change.)

(b) – (c) (No change.)

7:7-8.12 Civil penalties for violations of N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)

(a) Any person who violates any order by the Department, or violates any provisions of N.J.S.A. 13:9A-1 et seq., shall be, subject upon order of a court, **and in accordance with the grace period requirements set forth at N.J.A.C. 7:7-8.14,** to a civil penalty of not more than \$1000.

(b) (No change.)

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7:7-8.14 Grace Period Applicability; Procedures

(a) Each violation identified in Table A at (f) below by an “M” in the Type of Violation column for which the conditions of (d)1 through 6 below are satisfied, and each violation determined under (c) below as minor for which the conditions of (d)1 through 9 below are satisfied, is a minor violation and is subject to a 30-day grace period.

(b) Each violation identified in Table A at (f) below by an “NM” in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) If a violation is not listed in Table A at (f) below, the designation of the violation as minor or non-minor is determined as follows:

1. If the violation is not listed in Table A at (f) below but is comparable to a violation designated as “M” in Table A and the violation meets all of the criteria of (d) 1 through 6 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.

2. If the violation is not listed in Table A at (f) below and is not comparable to a violation listed in Table A but the violation meet all of the criteria of (d) 1 through 9 below, the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.

3. If the violation is not listed in Table A at (f) below but is comparable to a violation designated as “NM” in Table A, then the violation is a non-minor violation and is not subject to a grace period.

4. If the violation is not listed in Table A at (f) below and is not comparable to a violation listed in Table A, and the violation does not meet all of the criteria at (d)1 through 9 below, the violation is non-minor and is not subject to a grace period.

5. Comparability of a violation to a violation in Table A at (f) below is based on the nature of the violation[s] (for example, recordkeeping, accuracy of information provided to the Department, amount and type of impacts to the protected resources). A violation shall not be considered

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comparable to any violation designated as “M” in Table A unless the violation also meets the criteria at

(d)7 through 9 below.

(d) The Department shall provide a grace period of 30 days for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or a local governmental agency;

3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for a violation of the same requirement of the same permit within the preceding 12 month period;

4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12 month period;

5. In the case of a violation of the Coastal Area Facility Review Act, N.J.S.A.13:19-1 et seq.; The Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., or any rule or regulation promulgated thereunder, or permit issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12-month period;

6. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local governmental agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible;

7. The violation poses minimal risk to the public health, safety and natural resources;

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8. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

9. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

(e) For a violation determined to be minor under (a) or (c) above, the following provisions apply:

1. The Department shall issue a notice of violation to the person responsible for the minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period of 30 days.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (e)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation.

3. In response to a notice of violation, the person responsible for the minor violation shall submit to the Department, before the end of the specified grace period, written information, signed and certified to be true by the responsible person or his or her designee, detailing the corrective action taken or how compliance was achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period in writing no later than one week before the expiration of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The request shall be signed and certified to be true by the responsible party or their designee. The Department may, in its discretion, approve in writing an extension which shall not exceed 90 days, to

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accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;

ii. Whether the delay has been caused by circumstances beyond the control of the violator;

iii. Whether the delay will pose a risk to the public health, safety and natural resources; and

iv. Whether the delay will materially and substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within any approved extension, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date on which the notice of violation under (e)1 above, was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

(f) The designations of violations of the Coastal Permit Program rules relating to the Wetlands Act of 1970 and CAFRA and this chapter as minor ("M") or non-minor ("NM") are set forth in Table A below. The violation descriptions are provided for informational purposes only. In the event that there is a conflict between a violation description in Table A and the rule to which the violation description corresponds, the rule shall govern.

Table A

<u>Rule Citation</u>	<u>Violation Description</u>	<u>Type of Violation</u>
N.J.A.C. 7:7-1.5(a), 7:7-2.1(a), 7:7-2.2(a)	Failure to obtain a permit prior to conducting regulated activities (CAFRA, Wetlands Act of 1970)	NM

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<u>N.J.A.C. 7:7-1.5(b)1</u>	<u>Failure to notify the Department in writing at least</u> <u>3 working days prior to starting work under a</u> <u>permit</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)2</u>	<u>Failure to notify the Department in writing and</u> <u>certify that all permit conditions have been met</u> <u>within 5 working days prior to operation of a</u> <u>CAFRA development.</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)4</u>	<u>Failure to allow the Department free access to the</u> <u>site</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)5</u>	<u>Failure to obtain written permission from the</u> <u>Department prior to a change in plans or</u> <u>specifications on which a permit is issued</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)6</u>	<u>Failure to post and maintain permits and plans at</u> <u>the permitted site</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)7</u>	<u>Failure to inform the Department of adverse effects</u> <u>on the environment not described in the application</u> <u>or in the conditions of the permit</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b) 10</u>	<u>Failure to comply with terms of suspension or</u> <u>revocation notice</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)12</u>	<u>Failure to notify the Department of political</u> <u>subdivision's decision whether or not to accept land</u> <u>dedication</u>	<u>NM</u>

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<u>N.J.A.C. 7:7-1.5(b)13</u>	<u>Failure to apply for permit modification in the event of a rental, lease, sale or other conveyance by the permittee when there is a change in the site, proposed construction, or proposed use of the development from that identified in the original application.</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)14</u>	<u>Failure to comply with a permit condition that must be satisfied prior to the commencement of construction</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)15</u>	<u>Failure to file permit with the county clerk</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)16</u>	<u>Failure to minimize noise during construction</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)17</u>	<u>Failure to comply with the latest revised standards for soil erosion and sediment control under the Soil Erosion and Sediment Control Act of 1975</u>	<u>NM</u>
<u>N.J.A.C. 7:7-1.5(b)18</u>	<u>Failure to submit proof that the conservation restriction has been recorded</u>	<u>M</u>
<u>N.J.A.C. 7:7-1.5(c)2</u>	<u>Failure to submit a request to continue construction beyond the expiration of a permit no later than 20 business days prior to the expiration of the permit</u>	<u>M</u>
<u>N.J.A.C. 7:7-1.7(a)4</u>	<u>Failure to submit a complete coastal permit application within 10 working days of issuance of an emergency permit authorization</u>	<u>NM</u>

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<u>N.J.A.C. 7:7-2.2(b)</u>	<u>Conducting identified prohibited activities within coastal wetlands without prior Department authorization</u>	<u>NM</u>
<u>N.J.A.C. 7:7-4.2(a) 3</u>	<u>Failure to provide verification that copies of the application have been submitted to the clerk of the municipality in which the proposed development would occur including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission.</u>	<u>M</u>
<u>N.J.A.C. 7:7-4.2(a) 4</u>	<u>Failure to provide verification that the application has been submitted to the municipal construction official, planning board and environmental commission, and to property owners within 200 feet of the property or properties</u>	<u>M</u>
<u>N.J.A.C. 7:7-4.3(a)</u>	<u>Failure by a CAFRA applicant to provide appropriate newspaper public notice of permit application</u>	<u>NM</u>
<u>N.J.A.C. 7:7-4.3(b)</u>	<u>Failure to submit proof to the Department that CAFRA newspaper public notice requirements have been met</u>	<u>M</u>
<u>N.J.A.C. 7:7-4.5(f)</u>	<u>Failure of an applicant to provide appropriate public notice of public hearing on permit application</u>	<u>NM</u>

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<u>N.J.A.C. 7:7-7.3(a)4</u>	<u>Failure to provide verification that three copies of the application have been submitted to the clerk of the municipality in which the general permit activity would occur, and if appropriate, to the Pinelands Commission</u>	<u>M</u>
<u>N.J.A.C. 7:7-7.3(a)5</u>	<u>Failure to provide verification that a copy of the application has been submitted to the construction official and that certified mail notice has been provided to all owners of real property surrounding and sharing a property boundary</u>	<u>M</u>
<u>N.J.A.C. 7:7-7.3A</u>	<u>Failure to submit to the Department a request for modification of a coastal general permit authorization, should a permittee propose a change in the development</u>	<u>NM</u>
<u>N.J.A.C. 7:7-7.3A(e)</u>	<u>Failure to provide public notice for request for modification of a coastal permit authorization.</u>	<u>NM</u>
<u>N.J.A.C. 7:7-8.1</u>	<u>Failure to comply with a site-specific CAFRA permit condition issued by the Department.</u>	<u>NM</u>
<u>N.J.A.C. 7:7-8.1,</u>	<u>Failure to submit to the Department documentation required by a CAFRA permit condition.</u>	<u>M</u>

7:7-[8.14]**8.15** (No change in text)